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AUTHORITIES CITED.

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
ANGELINE LOMBARDO.
No. 830.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This case is here under the Criminal Appeals Act, 34 Stat. 1246, to review a decision of the District Court of the United States for the Western District of Washington (228 Fed. 980; R. 5–8), sustaining defendant's demurrer to an indictment founded on section 6 of the "White Slave Traffic Act," 36 Stat. 826.

Said section, in so far as material, is as follows:

> SEC. 6. That for the purpose of regulating and preventing the transportation in foreign commerce of alien women * * * for purposes of prostitution * * * and in pursuance of and for the purpose of carrying out the terms of the agreement or project of ar-

rangement for the suppression of the white-slave traffic, adopted July 25, 1902, for submission to their respective Governments by the delegates of various powers represented at the Paris conference, * * * *the Commissioner General of Immigration is hereby designated as the authority of the United States to receive and centralize information concerning the procuration of alien women,* * * * and to exercise supervision over such alien women, * * * receive their declarations, establish their identity, and ascertain from them who induced them to leave their native countries, respectively; and *it shall be the duty of said Commissioner General* * * * *to receive and keep on file in his office the statements* and declarations which may be made by such alien women * * * and those *which are hereinafter required.* * * *

Every person who shall keep, maintain, control, support, or harbor in any house or place, for the purpose of prostitution, * * * *any alien woman* * * * *within three years after she shall have entered the United States from any country, party to said arrangement for the suppression of the white-slave traffic, shall file with the Commissioner General of Immigration a statement in writing* setting forth the name of such alien woman, * * * the place at which she is kept, and all facts as to the date of her entry into the United States, the port through which she entered, her age, nationality, and parentage, and concerning her procuration to come to this country, within the knowledge of such person; and *any person who*

> *shall fail* within 30 days after such person shall commence to keep, etc. * * * any alien woman, * * * *to file such statement concerning such alien woman, * * * with the Commissioner General of Immigration, or who shall knowingly and willfully state falsely, or fail to disclose in such statement any fact within his knowledge or belief with* reference to the age, nationality, or parentage of any such alien woman, * * * or concerning her procuration to come to this country, shall be deemed guilty of a misdemeanor, etc. * * *
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> *No person shall be excused from furnishing the statement * * * on the ground * * * that the statement * * * or the information therein contained might tend to incriminate him, or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture under any law of the United States for or on account of any transaction, matter, or thing concerning which he may truthfully report in such statement as required by the provisions of this section.* [Italics ours.]

The indictment (R. 1, 2) alleged that the defendant, *at Seattle, in the Northern Division of the Western District of the State of Washington,* being a person subject to the provisions of section 6, *did willfully fail to file with the Commissioner General of Immigration* the statement therein required.

The defendant demurred (R. 4) on these grounds:

I. That section 6 is unconstitutional as contravening the rights secured to defendant by the Fourth

and Fifth Amendments to the Constitution of the United States.

II. That the court was without jurisdiction.

The demurrer was sustained on both grounds, the court holding:

I. That the provision for filing a statement violated the Fifth Amendment, since the laws of the State of Washington made keeping a house of prostitution an offense punishable by fine and imprisonment, and to file the required statement would tend directly to convict defendant of this offense; while the statutory immunity was not as broad as the constitutional guarantee, in that it was confined to prosecutions "under any law of the United States," and did not cover offenses against the State law.

II. The offense, if any, was committed within the District of Columbia, since the office of the Commissioner General of Immigration was fixed by law at Washington, and a failure to file could only take place at his office.

The decision was based, therefore, both upon the "invalidity," and upon the "construction" of section 6. The ruling upon the constitutional question necessarily determined that section 6 was invalid, and the ruling upon the question of jurisdiction necessarily construed the statute as creating an offense all of whose essential elements must occur in the District of Columbia.

SPECIFICATIONS OF ERROR.

These follow the ruling of the court; and, in various forms, challenge its correctness on both the above points.

ARGUMENT.

I.

The offense was begun in the Western District of Washington. Section 731 R. S. (now section 42, Judicial Code), is directly applicable, and the court had jurisdiction.

(*a*) Section 731 R. S. was originally part of section 30 of the act of March 2, 1867, 14 Stat. 484. Section 30 first made conspiracy, accompanied by an overt act, an offense. It then provided:

> * * * And when any offence shall be begun in one judicial district of the United States and completed in another, every such offence shall be deemed to have been committed in either of the said districts, and may be dealt with, inquired of, tried, determined and punished in either of the said districts, in the same manner as if it had been actually and wholly committed therein.

Since conspiracy was punishable at common law at the place it was formed, the special purpose of this part of section 30 clearly was to make it punishable both there and where an overt act occurred. *Hyde* v. *United States*, 225 U. S. 347, 360, 361.

This provision followed substantially section 12 of the act of 7 Geo. IV, ch. 64, passed in 1826.

Prior to this, in the case of *Rex* v. *Burdett* (1820), 4 B. and Ald. 95, it was held that if a libel be put in

the mail in the county of L, though delivered and actually circulated in another county, there is a "publication" in the county of L. Best, J. said (p. 126):

> So in the case of a libel, publication is nothing more than doing the last act for the accomplishment of the mischief intended by it. The moment a man delivers a libel from his hands his control over it is gone; he has shot his arrow, and it does not depend upon him whether it hits the mark or not. There is an end of the locus poenitentiae, his offense is complete, all that depends upon him is consummated, and from that moment, upon every principle of common sense, he is liable to be called upon to answer for his act.

The Chief Justice said (p. 170):

> And where a misdemeanor consists of such distinct parts, I say, without doubt or hesitation, that the whole may be tried in that county wherein any part can be proved to have been done.

(And he repeated this remark on page 180.)

Rex v. *Burdett* was followed in the similar case of Perkins (1826), Lewins C. C. 99, and is referred to as authority by Lord Coleridge, C. J., in *The Queen* v. *Holmes*, (1883) 12 Q. B. D. 23, 24, and by Kelly, C. B. in *The Queen* v. *Rogers*, 3 Q. B. D. 28, 33.

Not many cases appear to have been reported in England under the statute. In *Reg.* v. *Jones*, 4 Cox Cr. Cas. 198, the defendant was indicted for obtaining by false pretenses a post office order. It was held that he was properly tried in the county where the

letter containing the order was posted, though it was received in another county. Counsel for the Crown relied on the statute (p. 202), but it is not clear whether the Court considered it, though probably they did. In *Leech's Case*, Dearsley's Cr. Cas. 642, the defendant was indicted for obtaining money by false pretenses. The letter making the pretenses was mailed in A county and received in B. The money was sent by mail from B and received in A. It was held that the venue was properly laid in B. The Chief Justice said (p. 646):

> That offense was committed by the prisoner partly in one county, and partly in another. That is sufficient. The case comes within the statute, and the conviction must be affirmed.

(As to cases where the statute did not apply, see *The Queen* v. *Holmes*, 12 Q. B. D. 23, and *Reg.* v. *Ellis* (1899) 1 Q. B. 230.)

Canada has a similar statute to 7 Geo. IV, c. 64, namely, Criminal Code 584 (b). In *Queen* v. *Gillespie*, 2 Can. Cr. Cas. 309, the defendant was charged with having made, circulated, and published at Montreal a false statement as to his financial condition. The statement was made, and mailed in the Province of Ontario, but was sent to and received at Montreal. The court sustained the jurisdiction at Montreal, saying (p. 311):

> In the same way C writing, from Montreal, a threatening letter to E, a citizen of Toronto, to whom the letter is sent by mail, could be tried either at Toronto or Montreal.

In the *Queen* v. *Hogle*, 5 Can. Cr. Cas. 53, the defendant was indicted at A for converting there the proceeds of a note. The note was made at B, was given the defendant to collect at A, was actually collected at B. Jurisdiction at A was sustained on the authority of *State* v. *Haskell*, 33 Me. 127, the court saying (p. 57):

> There is a beginning, a continuation and a completion, and where the beginning is in one district, and the continuation and completion are in another district, the person accused of the offense may be arrested and proceeded against in either of such districts.

Prior to the passage of the act of March 2, 1867 (731 R. S.), in *Worrall's Case* (1798), 2 Dallas, 384, defendant was indicted for composing, writing, uttering and publishing in the Pennsylvania District a letter to C offering a bribe. The letter was mailed in Philadelphia but was received by C in New Jersey. The court said:

> The writing and the delivery at the post office (thus putting it in the way to be delivered to Mr. Coxe) must be considered, in effect, as one act; and, *as far as respects the defendant*, it is consummated within the jurisdiction of the court. [Italics ours.]

In *United States* v. *Ingraham* (1892), 49 Fed. 155, the defendant was indicted in the District of Rhode Island for making *and* presenting a false claim to the third auditor of the treasury department. Juris-

diction was assumed *sub silentio*, and the defendant convicted. The judgment was affirmed on error (*Ingraham* v. *United States*, 155 U. S. 434), no point of jurisdiction being raised, or suggesting itself to this court, although it is stated (pp. 435, 436):

> There was evidence before the jury tending to show that the accused presented to the Third Auditor of the Treasury of the United States and used and caused to be used before that officer in the prosecution of his claim against the government of the United States a certain paper * * *.

In *United States* v. *Adler* (1892), 49 Fed. 733, the indictment alleged that the defendant, in the Southern District of Iowa, did present to the Commissioner of Pensions at Washington, in the District of Columbia, a certain false affidavit. The defendant demurred on the ground that the jurisdiction was in the District of Columbia, but the Court overruled the demurrer. In *United States* v. *Murphy* (1898), 91 Fed. 120, the indictment charged that the defendant did in the District of Washington export from a port of the United States to a place in Alaska certain whiskies. The law apparently only punished the introduction of liquor into Alaska. The court held that it had jurisdiction as the offense had been begun in the District of Washington, though consummated in Alaska. In *Bridgeman* v. *United States* (1905), 140 Fed. 577, the defendant was indicted for making and presenting to the Commissioner of Indian Affairs of the United

States a false claim. The Circuit Court of Appeals for the Ninth Circuit held (p. 591):

> Lastly, it is contended that the court below had no jurisdiction of the case, for the reason that whatever offense is charged was committed in the District of Columbia, and not in Montana. The answer to this is that the offences were at least commenced in the State of Montana and therefore come within the provisions of Section 731 of the Revised Statutes * * *.

In *United States* v. *Sheridan-Kirk Contract Co.*, (1906), 149 Fed. 809, the indictment alleged that the defendant did, in the Southern District of Ohio, direct and permit a laborer on the public works of the United States to work more than eight hours in one calendar day. The defendant asked a special charge that, to constitute an offense, the work of the laborer must be done within the district. It was held sufficient if the defendant required or permitted the work within the district.

On the other hand, in *Ex parte Skaffenburg* (1877), 4 Dill. 271, the defendant was indicted under 5438 R. S. for making in Colorado a false claim for payment and approval by officers of the Treasury Department of the United States, and presenting and causing to be presented said claim to the first auditor and first comptroller. Judge Dillon, Justice Miller concurring, held that the offense was committed in Colorado. He said (p. 276):

> The statute distinguishes between the *making* and the *presenting* of a fraudulent account or bill. It makes each a distinct offence. It may be that the offence of *presenting* a false bill or account to the treasury department in Washington can only be prosecuted in the courts of the District of Columbia; but the offence of *making* a false bill or account may be prosecuted in the judicial district in which the fraudulent claim is made. What constitutes or consummates the making of a false claim, within the meaning of the statute, may be difficult to define so as to embrace within the definition all cases that might arise. For the purposes of the present application, it is sufficient to say that we are of opinion that the facts averred in the second count of the indictment do show a completed offence within the territorial limits of the district of Colorado. In other words, our judgment is, that if a marshal of the United States for a given district shall make out a false and fraudulent bill against the United States for official services or expenses, and present the same to the court for approval, and, after having secured that, shall forward the same to the treasury department at Washington for payment, or otherwise cause the same to be there presented for this purpose, this is the *making*, in such district, of a false and fraudulent bill, within the meaning and purpose of the statute.

In spite of the carefully qualified language of the opinion, it is submitted that the case really holds

that the making was "begun" in Colorado, since the mere making, without some effect upon the treasury officials at Washington could hardly constitute the crime defined by section 5438 R. S. And this view is fortified by the concluding language of the opinion which points out difficulties equally apparent in the case at bar:

> * * * The opposite construction overlooks the distinction which the statute so broadly marks between the *making* and the *presenting* of fraudulent claims, and by confining the jurisdiction, in most cases, to the District of Columbia, would *rob the statute of its utility by disabling the Government to prosecute for its violation, except under obvious difficulties, and at great expense, both to itself and to the persons whom it accused.* [Italics ours.]

While there may not be any direct decisions of this court upon the precise question raised in the case at bar, it is submitted that the cases decided by this court are all indirectly in favor of the Government's contention. In the *Palliser* case, 136 U. S. 257, jurisdiction was sustained where the offense was completed, but Judge Gray said (p. 266):

> When a crime is committed partly in one district and partly in another, *it must*, in order to prevent an absolute failure of justice, be tried in either district, or in that one which the legislature may designate. * * * (Referring to 731 R. S.) [Italics ours.]

The same is true of the *Horner* case, 143 U. S. 207 (see p. 212), the *Benson* case, 198 U. S. 1 (see p. 15),

and the *Burton* case, 202 U. S. 344 (see p. 388). It is submitted that the reference to and reliance upon 731 R. S. in those cases shows that the defendants could also have been indicted in the jurisdictions where these offenses had "begun" by the mailing of a letter.

In *Cochran's* case, 157 U. S. 286, the defendants were indicted for making, in the District of Colorado, a false entry in a report to the Comptroller of the Currency. No question seems to have occurred to the lower court or this court that the District Court of Colorado had not jurisdiction.

In *Putnam* v. *United States*, 162 U. S. 687, the defendant was indicted in the District of New Hampshire for there unlawfully abstracting and converting to his own use the money of a bank. Practically all, if not all, of the acts of the defendant were done in Boston. The court sustained the jurisdiction in New Hampshire, but, after citing 731 R. S., said (p. 711):

> On the face of the foregoing facts it is evident that the alleged criminal acts arising from the two January checks were begun in Massachusetts. The question is, were such acts there completed or did the final fact, which was essential to effectually absorb the credit of the Exeter bank with the Boston bank, take place in New Hampshire?

In *Haas* v. *Henkel*, 216 U. S. 462, the defendants were indicted both in the Southern District of New York and in the District of Columbia for conspiracy

to defraud the United States by secretly obtaining information from an official at Washington, and using it in speculation in New York. Jurisdiction in either district was evidently upheld under 731 R. S. (see p. 474).

In *Portale's* case, 235 U. S. 27, the lower court and this court assumed jurisdiction without question in precisely the same kind of a case in which the lower court here refused jurisdiction.

In *Lamar's* case, 240 U. S. 60, 65, 66, while jurisdiction was sustained, in the case of personation by telephone, in the district where the personation took effect, there seems to be an intimation that the offense could also have been prosecuted in the district where the telephone was actually used.

In the States where there is a statute similar to 731 R. S. the courts have, so far as we can discover, made the same rulings, *e. g.*, *State* v. *Mason*, 61 Kan. 102, 109 (making false statements to a bank commissioner); *Archer* v. *State*, 106 Ind. 426, 429 (murder).

Coming now to the authorities which may be cited for defendant, it is submitted that they are all, but one, distinguishable, either because the act required could by its nature only be legally begun and completed at one specific place, and hence the failure to do it could only be begun and completed there; or because the court did not hold or have to hold that there was no jurisdiction where the failure was begun. In *Rex* v. *Weston*, 4 Burr, 2507, and *The King* v. *Gloucester*, 5 Term Rep. 498, it was held that an indictment for failure to repair a highway could only

be brought in the county where the portion of the road to be repaired lay. In *Reg.* v. *Milner*, 2 C. & K. 310, the indictment alleged that the defendant, a bankrupt, had notice to surrender himself at the Bankruptcy Court at Birmingham at 3 o'clock on a day certain and that he did not surrender. Maule, J., held that the defendant must be tried at Birmingham, saying (p. 311):

> Assuming the facts to be as alleged, as soon as three o'clock came, and the prisoner did not surrender at Birmingham, he committed the offense there.

If section 6 of the White-Slave Traffic Act must be construed to require the defendant to present herself in person at the office of the Commissioner of Immigration within thirty days and there herself file the statement, the above cases are in point; otherwise not.

On the other hand are certain cases dealing with the failure of a servant or agent to account for money received for his employer. In *Hobson's* case (1803), Russ & Ry. 56, there was a receipt in Shrewsbury, but the master lived in another county, and the money should have been paid to him there. All the judges, with the exception of Lawrence, held that the defendant could be tried at Shrewsbury. In *Reg.* v. *Davison* (1855), 7 Cox Cr. Cas. 158, it was held that the embezzlement took place abroad, but Alderson, B., said (p. 162, 163):

> Where there is no evidence of fraudulent embezzlement, except the non-accounting, the

> venue may be laid in the place where the non-accounting occurred, because the jury may presume that there the fraudulent misappropriation was made, but this cannot apply where there is distinct evidence of the misappropriation elsewhere. * * * *According to your argument, the offense would be committed at the place where the master was residing at the time when the servant ought to have accounted.* [Italics ours.]

In *The Queen* v. *Rogers* (1877), 3 Q. B. D. 28, the defendant received the money in Yorkshire, and from there wrote a letter to his employer in Middlesex implying that he had not received it. It was held that he could be indicted in Middlesex. Lindley, J., said (p. 40, 41):

> I do not mean to say that the prisoner could not have been indicted in Yorkshire, on the contrary, *I think he could have been there indicted.* The letter of the 21st of April was meant to reach the masters in London. *It was a fraudulent failure to account when posted, and it operated as a fraudulent failure to account when received.* [Italics ours.]

Manisty, J., said:

> He was well indicted in that county, although he might also, I think, have been indicted in the county of York.

In *State* v. *Marmouget* (1903), 110 La. 191, the defendant was prosecuted for failing to provide and furnish an adequate supply of water on certain premises. It was held that the jurisdiction was not where

the defendant lived, but where the premises were situated. The court said of the offense (p. 193):

> In the nature of things, it was committed at the premises, and not at the place where the relator's person happened to be.

The above offense was one which could have had no beginning in any other place than that where it was completed.

In *Bennefield* v. *State*, 80 Ga. 107, *Johnson* v. *The People*, 66 Ill. Apps. 103, *State* v. *Peabody*, 25 R.I. 544, and *Cleveland* v. *The State*, 7 Ga. Apps. 622, it was held that an indictment against a father for failure to support his children could be brought in the county where the children actually lacked support. In the Rhode Island case it was said (p. 545):

> The place where an injury is done is the place where the crime is committed. If one personally out of the country puts in motion a force which takes effect in it, he is answerable where the evil is done though his presence be elsewhere. Where a man standing beyond the outer line of our territory, by discharging a ball over the line kills another within it; or, himself being abroad, circulates libels here, or in like manner obtains here goods by false pretences; or does any other crime in our own locality against our laws; he is punishable, though absent, the same as if he were present. Bish. Crim. Law, 8th ed. § 110, and cases cited.

Evidently there is no holding here that the defendant might not have been prosecuted in the place

where he was when he failed to support his children, and the same is true of the other cases.

On the other hand, in *Commonwealth* v. *Acker*, 197 Mass. 91, the defendant was prosecuted for failure to support a minor child. It appeared that the defendant was domiciled in Massachusetts, but that the child lived in Nova Scotia, and had never been within the State of Massachusetts. Nevertheless the jurisdiction was upheld. The court said (p. 93):

> The offender is here, within our jurisdiction. While residing here he ought to make provision for the support of his wife and minor children, whether they are here or elsewhere. *If he fails to do this, his neglect of duty occurs here, without reference to a place where the proper performance of his duty would confer benefits.* [Italics ours.]

Lastly, it is necessary to consider the decision of the Circuit Court of Appeals of the Second Circuit in *New York Central and Hudson River R. Co.* v. *United States*, 166 Fed. 267, justly relied upon by the court below, and directly in conflict with the views urged by the Government in the case at bar.

In that case the defendant was indicted under section 1 of the Elkins Act, in connection with section 6 of the Interstate Commerce Act. The latter provided that every common carrier subject to its provisions should file with the Interstate Commerce Commission copies of its schedule of rates; and section 1 of the Elkins Act provided that the wilful failure upon the part of the carrier to file and publish the tariffs of

rates should be a misdemeanor. The indictment alleged that the defendant, in the Western District of New York, wilfully failed to file with the Interstate Commerce Commission the required schedule of rates. The Court of Appeals held that the only jurisdiction was in the District of Columbia. They said (p. 269):

> Assuming, then, that the rate in question had been established and published, and that the defendant was bound to file with the commission a copy of the schedule containing it, where was it bound to file it? Manifestly, in the office of the commission in Washington. It could be filed with the commission there. No provision is made by which it could be filed elsewhere. The duty of the defendant being to file the schedule in Washington, where did the omission of duty—the violation of the statute—take place? Manifestly, in Washington. When an offense consists of an omission to do an act required by law, the commission of the offense necessarily takes place where the act ought to have been done. The offense of failing to file the schedule with the commission having been committed in Washington, in the District of Columbia, the District Court for the Western district of New York had no jurisdiction unless it was conferred by the venue provision in the section of the Elkins act already quoted. No other statute goes further than that.

They later (p. 270) referred to the provision in section 1 of the Elkins Act which is precisely similar to section 731 R. S., and said in regard to it.

> * * * This provision applies to a continuing offense—"a continuous, unlawful act or series of acts set on foot by a single impulse and operated by an unintermittent force, however long a time it may occupy. Where such an act or series of acts runs through several jurisdictions, the offense is committed and cognizable in each." *Armour Packing Co.* v. *United States*, 153 Fed. 1, 5, 82 C. C. A. 135, 137, 14 L. R. A. (N. S.) 400.
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> But the failure to file a rate schedule with the Interstate Commerce Commission is in no sense a continuous offense running into different districts. The offense consists in the failure to do a single act in a single place, to wit, to file a schedule in Washington. The preparation of the schedule is an entirely lawful act, and wholly distinct from the duty or omission of duty to file it. The work of preparation is ended before the duty to file begins. The case is not at all analogous to the offense of presenting a false claim in one district which was prepared in another. There the unlawful preparation might well be considered an essential part of the unlawful presentation, and the commission of the offense as having been commenced where the preparation took place. The distinction is between a continuous unlawful act and an unlawful act following a completed lawful act.

These quotations show that the particular line of reasoning, upon which the decision of the court was based was that the offenses referred to in section 1 of the Elkins Act, and inferentially in section 731 R. S.,

are necessarily continuous offenses, and to sustain this view it cites the *Armour Packing Company* case as reported in 153 Fed. 1. This view, it is submitted, is entirely incorrect, and gains no support from the report of the *Armour Packing Company* case on certiorari to this court, 209 U. S. 56; for, in that case, on page 74, this court said:

> Congress doubtless had in mind that some of these offenses might be complete in a single district; *some might be begun in one and completed in another; and those wherein transportation—actual carriage—was made an essential element might continue through several districts, and hence undertook to provide places for trial of any offense which might be committed against the provisions of the act.* [Italics ours.]

While every crime may be considered continuous in a logical sense, the law need not, and in fact does not, regard ordinary offenses in that light. The mailing of a letter from New York to San Francisco may constitute a continuous offense in every district through which the letter passes. Section 731 R. S., and section 1 of the Elkins Act in the part similar to 731 R. S., however, do not undertake to go so far, and merely punish the defendant in the place where the offense has either been "begun," or "completed," in a legal sense. It does not follow at all that under section 731 the defendant would be punishable in every district in which his act may have produced some effect; and, therefore, the Circuit Court of Appeals for the Second Circuit was wrong in first holding that every offense punishable under section

731 must be a continuous offense, and then holding that the failure to file a report is not a continuous offense. It does not have to be a continuous offense under section 731 R. S. It is sufficient if the failure to file the report was begun, or could be begun, within one judicial district and completed in another.

It is submitted therefore that the decision in the *New York Central and Hudson River Railroad Company* case is incorrect, and should be overruled.

Coming now to the particular provisions of section 6 of the White Slave Act, they contemplate three different acts: (*a*) The filing of a correct report; (*b*) the filing of a false report; and (*c*) the failure to file any report at all. Because in compliance with the law, no penalty is prescribed for act "(*a*)"; but this requirement sheds light on the other more uncertain provisions which raise the question of venue here considered.

Defendant was indicted in the judicial district where she was domiciled, resident and present, both at the time of the indictment and of the commission of the offense. Could her actual failure to file be "begun" within that jurisdiction?

Generally every crime involves an actor and a subject. The actor begins by a mind effort, a scheme, and thenceforth until the final intended effect is produced on the subject there are happenings in both space and time. With few exceptions every crime has continuity. But the law, being essentially practical, does not regard every crime as continuous for the purpose of jurisdiction. Limiting

itself to actor and subject, it distinguishes between commencement and completion only, and punishes in the jurisdiction where either occurs. To do less would disgrace a practical system. This does not mean that everything done in a particular jurisdiction is punishable there, or that a defendant may be punished in every jurisdiction within which any part of the original force loosed by him may operate. For practical purposes it usually suffices to punish where the actor began, or where the subject suffered the intended result.

So too, as to the beginning. Mere evil conceptions may release uncontrollable forces. Various steps taken to insure concealment or to aid commission may be morally wrong; yet the practical sense of the law may not regard them as criminal. It is sufficient, at least in the case at bar, to say that as soon as the actor has done any one thing which is an essential element, *i. e.*, which would be legally causal to the offense within the rule of proximate cause in the law of negligence, he has "begun" the crime. The act may fail to accomplish its intended result. None the less has the actor begun the crime; and he is properly punishable *where* the crime is so begun, as well as *where* it shall have accomplished such result.

Aapplying these principles to the offense defined by section 6, where, according to its proper meaning, may the filing of either a true or false report, or the failure to file any, be said to be begun?

The court below said:

> * * * the word "file" was not defined by Congress. No definition having been given, the etymology of the word must be considered and ordinary meaning applied. The word "file" is derived fro.. the Latin word "filum" and relates to the ancient practice of placing papers on a thread or wire for safe keeping and ready reference. Filing, it must be observed, is not complete until the document is delivered and received. "Shall file" means to deliver to the office and not send through the United States mails, *Gates* v. *State*, 126 N. Y. Court of Appeals, 221. A paper is filed when it is delivered to the proper official and by him received and filed. Bouvier Law Dictionary; *White* v. *Stark*, 134 Cal. 178; *Wescott* v. *Eccles*, 3 Utah, 258; *In re Van Varoke*, 94 Fed. 352; *Mutual Life Ins. Co.* v. *Phiney*, 76 Fed. 618. Anything short of delivery would leave the filing a disputable fact, and that would not be consistent with the spirit of the act.

Herein the court below wholly failed to distinguish between the "beginning" and the "completion" of the offense; giving the words "shall file," etc., a meaning so narrow as to destroy the section. Such a method of construction might well bring the administration of the law into contempt.

Observe the situation when the act was passed. Alien women were being introduced over every border and being harbored everywhere. The law was to be operative throughout the country, from Canada to Mexico, and from the Atlantic to the Pacific. The purpose of this section was to gather treaty-promised

information as to conditions obtaining in each locality, and to place the same for convenient reference in one office. The gathering was the prime purpose; and so the act specified the contents of the required written instrument. The language "shall file * * * a *statement in writing* setting forth" etc., and "shall fail to file * * * *such statement*" etc., must be read in the light of these considerations.

The cases referred to by the court below in that part of its opinion above quoted, do not determine the question here involved. They declare what makes a filing; *i. e.*, when it becomes *complete*. We concede that an offer is essential to complete the filing; and that this final step must transpire in the District of Columbia. At the same time we insist that the Western District of Washington may also have jurisdiction, provided a proximate initial act beginning the offense be done in the latter place. To hold that every element of the offense must legally transpire in the District of Columbia and not elsewhere, would be to force indictment in the District of Columbia of every harborer in every part of the country who either fails to prepare, or falsely prepares and files the statutory statement. Each must then be removed here and tried here. And, as the harboring must be proved or disproved by witnesses from the particular locality where the woman was being held, witnesses would necessarily be brought here from all parts of the country at great expense and inconvenience to all parties.

Such a construction should not be indulged unless none other is available. Here the language may be readily read to accomplish the plain purpose of the statute. Among the definitions of the word "file" given by the Standard Dictionary is the following:

> To present in the regular way * * * so that it shall go upon the records, * * * etc.

Contrasting the duty of the Commissioner "to receive and keep on file" with the duty of the harborer to file the statement framed, *i. e.*, prepared, as required by the act, it becomes plain that something corresponding to the passive verb "receive," used in defining the Commissioner's duty, must be found if possible in determining the duty of the harborer. This would be accomplished by reading the words "shall file a statement in writing setting forth," etc., as "shall cause to be presented for filing" or even "shall prepare and offer for filing." We submit that this reading can and should be indulged in. For without its preparation or making, the particular statement defined by the section could not be offered to the Commissioner.

The steps essential to a completed filing under the provisions of this statute are (1) the preparation by the harborer of a statement in writing containing the information specifically prescribed by the section; (2) the transmission thereof to the office of the Commissioner General of Immigration at Washington, D. C.; and (3) its delivery at that office to be placed among its records. As in conspiracy the offense is

begun by the formation of a criminal plan and completed by a later overt act, so here the active offense of false filing is begun by the preparation of a false statement, but not completed until the offer of the statement to the officer. If the sequence is interrupted after the preparation of the false statement so that the second or the third step is not taken the offense is not complete. But if the three steps are all accomplished—each in a different jurisdiction—the actor may be prosecuted either where the initial step was taken or the initial omission had, or where the offense was completed. The statement within the contemplation of Congress might be presented to the officer (*a*) by the actor in person, or (*b*) by her agent in Washington, D. C., or (*c*) by an agent sent from Seattle, or (*d*) it might be transmitted from Seattle by mail, express, or (*e*) (possibly) after filing it in the local office, by telegraph, telephone, wireless, or some efficient device yet to be invented. Any means that shall produce the final act completing the offense, *i. e.*, the ultimate receipt by the officer, satisfies the statute. The preparation of the false statement with intent to later cause its delivery is the first essential step or beginning of the offense within the meaning of section 731, *supra;* and, if done in Seattle and followed by the other two steps, the first act gives jurisdiction to the Western District of Washington. As in conspiracy the criminal plan may be formed in one place and the act completing the offense may be done elsewhere, so here the statutory statement may be prepared in one place and delivered in another.

The case of failure to file is even more simple. The language is "who shall fail to file * * * *such* statement." In effect it punishes the failure to prepare or make and deliver for filing, *i. e.*, to cause to be presented for filing, the kind of a statement specified by the statute; and as the act of preparation or making may be done in Seattle in the case of a harborer living there, so the omitting to prepare within the 30 days is necessarily done where, if prepared, the preparation might have occurred.

On a charge of failure to file a statement quite as serious a question could be raised for a defendant always living at Seattle, and who had never been in the District of Columbia, if indicted at the latter point. The contention then would be that while, if he had delivered a false statement here he would have done something within the District of Columbia, his mere nonaction, while always absent, could not subject him to prosecution away from his home and on the other side of the continent. Of course, we contend that he would be subject in such cases to prosecution either here or in Seattle.

After all, the soundness of the Government's contention can be best illustrated by example. Suppose that in Seattle this defendant had prepared a complete truthful statement and had mailed it to an agent in Washington, D. C., with instructions to deliver to the Commissioner; that becoming uncertain because of advice, on the day after mailing she wired her agent at Washington to hold the statement for further directions; that thereafter, having

been suddenly called to Washington, D. C., on other business and arriving on the thirtieth or last day for offering the statement, she took further advice and then first determined to substitute a false in place of a true item in the statement; that accordingly, she withdrew a sheet from the original statement; substituted another carrying the false item; and delivered it at the office of the Commissioner on the afternoon of the thirtieth day. Or again, suppose that having reached Washington, D. C., as above, she determined to file no statement; took the one transmitted from Seattle, held it during all of the thirtieth day in Washington, D. C., and left the thirty-first day for Seattle without offering anything to the Commissioner.

In each case two steps would have been taken in Seattle: preparation and transmittal; and the law would have been ultimately violated by either the delivery of a false statement or the refusal to deliver any. Plainly, however, the jurisdiction would be solely in the District of Columbia because the preparation in, and transmittal from, Seattle were acts in compliance with, rather than in violation of, the section; and therefore could not constitute the beginning of an offense. In the case of the false statement the offense would have been begun when the sheet was replaced. This would have been followed by its carriage to the Commissioner and the offer, so that all three steps violative of the statute would have transpired in Washington, D. C. In the case

of the refusal to file, that refusal would have occurred on the thirtieth day while she was in Washington, D. C.

Assume, on the other hand, that as originally prepared at Seattle, the statement had contained a false item. In that event its preparation and its mailing with delivery directions would each have been an act violative of the statute. If followed by a delivery as directed, this last act would have completed the offense of false filing. Or if she had by wire prevented its delivery, and had afterwards prepared and sent from Seattle a second true statement, causing it to be delivered by the Commissioner before the expiration of the thirtieth day, the statute being complied with, there would have been no completed offense in either place. It would be analogous to the case of a criminal plan without the overt act essential to the completion of the statutory offense of conspiracy.

On the other hand, if, after countermanding the filing of the false statement, she had remained in Seattle and neither prepared nor caused to be prepared, nor forwarded nor delivered any statement, the failure to prepare or transmit would have occurred, in the eyes of the law, in Seattle, and the failure to deliver would have occurred in Washington, D. C., with resulting jurisdiction in either place.

The palpable error of the court below lay in assuming that non-delivery was the only step, act, or element, approximately related to the commission of the offense.

II.

Section 6 of the White Slave Traffic Act Is Constitutional.

(a) The Fifth Amendment has no application to the case, because, by filing such a report, the defendant is not compelled in a criminal case to be a witness against herself.

Section 6 is and purports to be in furtherance of the international agreement for the suppression of the white slave traffic (35 Stat. 1979). That convention obligated this Government to designate an authority "to centralize *all information concerning the procuration of women or girls*, both, *in a view to their debauchery in a foreign country*" (which designated authority in this country is the Commissioner of Immigration), and to exercise a supervision *to find out* the conductors of women or girls intended for debauchery, and to procure within the limits of the laws *all information* of a nature to discover a criminal traffic. The reports, therefore, required by Section 6 are not in the least of the nature of judicial investigations, but are in aid of administrative officials in carrying out the constitutional powers of the Federal Government to make treaties and to regulate interstate and foreign commerce. It must be assumed for the purposes of the case at bar that Congress had a right to require them as properly incidental to these two great powers. *U. S.* v. *Portale*, 235 U. S. 27.

The question presented, therefore, is whether, to require, in the ordinary execution of governmental functions, reports from persons legally subject thereto

for the official information of the administration, is to compel such persons *in a criminal case to be witnesses* against themselves. It should be especially noted that the question is not whether such reports may be subsequently received in evidence in a criminal prosecution against the person making them, but whether the mere rendering of them to the administrative officer is contrary to the Fifth Amendment. Certainly there is nothing in the history of the doctrine at the common law, or in the history of the amendment, or in its language, however liberally interpreted, which requires any such conclusion. The word "witness" points to some judicial or quasi judicial investigation, and the words "criminal case" can hardly be stretched to cover official reports. Nor, so far as we can discover, is there anything in the decisions of this Court which compels such a conclusion, but rather the contrary. In *Counselman* v. *Hitchcock*, 142 U. S. 547, it was claimed on behalf of the Government that the constitutional privilege only applied to a direct criminal proceeding against the very party asserting it. This court held otherwise, and said (p. 562):

> It is impossible that the meaning of the constitutional provision can only be, that a person shall not be compelled to be a witness against himself in a criminal prosecution against himself. It would doubtless cover such cases; but it is not limited to them. *The object was to insure that a person should not be compelled,*

> *when acting as a witness in any investigation, to give testimony which might tend to show that he himself had committed a crime. The privilege is limited to criminal matters, but it is as broad as the mischief against which it seeks to guard.* [Italics ours.]

This ruling clearly limits the privilege to cases where the person claiming it is a witness in a judicial or quasi judicial investigation, or, if it be a case of papers, where they are obtained from him *in invitum* in such an investigation; and, so far as we know, it has never been overruled or qualified by this court. (See also *Hale* v. *Henkel*, 201 U. S. 43, 66.)

In *B. & O. R. R. Co.* v. *Int. Com. Comm.*, 221 U. S. 612, 622, 623, the company objected that to compel it to file certain reports with the Interstate Commerce Commission would violate the Fifth Amendment. The objection was overruled on the ground that a corporation can not plead a privilege against self-crimination under the Fifth Amendment. The principle, however, at the basis of this ruling seems analogous to that asserted by the Government in the present case, since the duty of a corporation to render reports to the sovereignty under whose jurisdiction it lies, seems similar to the duty of a person whose business the Government may lawfully supervise to render proper official reports in regard to it.

In *Johnson* v. *United States*, 228 U. S. 457, it was held that the books of a bankrupt transferred to his trustee by section 70 of the Bankruptcy Act could be

used against him in a criminal prosecution. The court said (pp. 458, 459):

> * * * It is true that the transfer of the books may have been against the defendant's will but *it is compelled by the law as a necessary incident to the distribution of his property, not in order to obtain criminal evidence against him.* Of course a man cannot protect his property from being used to pay his debts by attaching to it a disclosure of crime. If the documentary confession comes to a third hand *alio intuitu*, as this did, the use of it in court does not compel the defendant to be a witness against himself. [Italics ours.]

This case, it is true, turned principally on the question of title, but it indicates that information obtained in the regular execution of a statute, not for the purposes of criminal prosecution, is not within the Fifth Amendment.

Prof. Wigmore confines the privilege to judicial or quasi judicial investigations. In section 2263 of his work on Evidence, after discussing the principle governing the form of disclosure, he concludes:

> In other words, it is not merely compulsion that is the kernel of the privilege, in history and in the constitutional definitions, but *testimonial compulsion*. The one idea is as essential as the other.

In his supplementary volume V, page 230, he says:

> An interesting question is here presented by those laws which require, from persons in a particular *business*, the *filing of a report* or

schedule in the hands of some public officer. Are we to say that this is a compulsory testimonial disclosure, and that therefore the report need not be prepared and filed at all, so far as concerns matters tending to criminate? Or are we to say that if the purpose of the report is primarily to assist in the public administration, it must be prepared and filed, and that then its use in a criminal prosecution, if attempted, can be barred by the privilege? The latter seems the more sensible and practical view. But the cases have thus far been decided on individual grounds, usually either that of waiver or that of official duty.

The decisions in the State Courts, so far as we have been able to discover, sustain our contention. In *State* v. *Smith*, 74 Iowa 580, 583; *State* v. *Cummins*, 76 Iowa 133, 136; *People* v. *Henwood*, 123 Mich. 317, 320; *People* v. *Shuler*, 136 Mich. 161, 165; and *State* v. *Donovan*, 10 N. Dak. 203, 209; it was held that reports required from druggists as to their sales of liquors were not privileged. In *City of St. Joseph* v. *Levin*, 128 Mo. 588, the same was held as to reports of pawnbrokers. In *State* v. *Hanson*, 16 N. Dak. 347, 354, it was held that to require the registration and publication of the United State internal-revenue receipt for the Federal liquor tax did not violate the constitutional provision prohibiting self-incrimination. In *Aston* v. *The State*, 27 Tex. Apps. 574, the same ruling was made as to reports required of slaughterhouses. So as to identification tags for automobiles, and similar regulations.

To hold that such reports as are required under section 6 of the "White-Slave Traffic Act" are within the Fifth Amendment, would cause most serious, and, it is submitted, undue obstruction to the operations of the Federal Government. We print as an appendix hereto a list of statutes which require such reports. They cover internal revenue, immigration, bankruptcy, interstate commerce, the census, and banking. No doubt a more thorough search would disclose others. Can it be that all these statutes, many of them in force for years, are unconstitutional, because to render such reports would tend to incriminate the reporter? Can banks refuse to report to the Comptroller of the Currency, common carriers to the Interstate Commerce Commission, taxpayers to the Commissioner of Internal Revenue, nay, for that is what it practically comes to, can officers and agents of the Government refuse to report to their superiors, on the plea of possible self-incrimination? To ask such questions is to answer them. The just rights of defendants must be protected, and inquisitorial methods, even in administrative officers, should not be tolerated, but, on the other hand, the ordinary, regular processes of the Government should not be stopped by a mere technical assertion of a constitutional privilege never meant to apply to such cases.

(b) The immunity granted by section 6 is as broad as the constitutional guaranty.

The only reason given by the court below for holding that it is not, was that it did not protect the defendant against prosecution under the State laws, the

immunity being expressly limited by section 6 to prosecutions, penalties and forfeitures "under any law of the United States." The point is no longer open in this court. It is true that in *Brown* v. *Walker* (1896), 161 U. S. 591, 606, 607, 608, (which is the only case referred to and relied upon by the court below) there is an intimation that the Federal Government may confer immunity against prosecution for State offenses, and that the statute there in question was broad enough to do this; but in regard to this it is clear—

(1) That the remarks were dicta, since the court concluded as follows (p. 608):

> But even granting that there were still a bare possibility that by his disclosure he might be subjected to the criminal laws of some other sovereignty, that, as Chief Justice Cockburn said in *Queen* v. *Boyes*, 1 B. & S. 311, in reply to the argument that the witness was not protected by his pardon against an impeachment by the House of Commons, is not a real and probable danger, with reference to the ordinary operations of the law in the ordinary courts, but "a danger of an imaginary and unsubstantial character, having reference to some extraordinary and barely possible contingency, so improbable that no reasonable man would suffer it to influence his conduct." Such dangers it was never the object of the provision to obviate.

(2) The view that the Federal Government can constitutionally protect a person against prosecutions

for offenses against State laws is subversive of the essential character of our dual system of government, and can not be supported, nor considered as law in this court. The reasoning of Prof. Wigmore on the subject (Evidence, vol. III, pp. 3113, 3114), is, it is submitted, unanswerable:

> * * * But, more than this, the answer is that a radical fallacy of principle underlies the assumption that the Courts of one State may consider the effect of enforced disclosures as creating a danger of prosecution in another sovereignty. It is not in the power or duty of one State, or of its Courts, to be concerned in the criminal law of another State. For the former, there is but one law, and that is its own. The boundaries of our Constitution and our sovereignty are coextensive. A constitution is intended to protect the accused against the methods of its own jurisdiction and no other. The Court's view, as well as its functions, should be confined to its own organic sphere. Practical considerations also deter. The Court of one State knows nothing of the policies and rules of other systems; and it risks error and adds great burdens in attempting to master them. Further, it cannot well know the real probabilities of danger of prosecution under another system; for it would need to know what means and motives for prosecution there existed, what likelihood there was of migration thither by the accused or of his capture when arrived or of his involuntary extradition, and what the probability was of the discovery and employment in that prose-

> cution of the disclosure now desired. Even if it could ascertain these elements of probability, it could not define any workable rule for measuring them. The only conceivable rule would be that when an act was by any possibility capable of being treated as criminal by the law of any other sovereignty, the privilege should protect it. That such a rule should be seriously suggested seems incredible.

This view has evidently been adopted by this court in three cases decided upon the subject since *Brown* v. *Walker*, supra, namely, *Jack* v. *Kansas*, 199 U. S. 372, *Hale* v. *Henkel*, 201 U. S. 43, and *Nelson* v. *United States*, 201 U. S. 92. It is true that in the former case the claim was that it would be a violation *of the Fourteenth Amendment* to compel defendant to testify, since no immunity was granted against prosecutions under Federal laws; but this court assumed (p. 380), for the purposes of its opinion, that the Fourteenth Amendment protected the defendant, if the State statute did not give sufficient immunity, and, after referring to *Brown* v. *Walker* said in regard to that case (p. 381):

> * * * While it was asserted that the law of Congress was supreme, and that judges and courts in every State were bound thereby, and that therefore the statute granting immunity would probably operate in the state as well as in the Federal courts, *yet still, and aside from that view, it was said that while there might be a bare possibility that a witness might be subjected to the criminal laws of some other sov-*

ereignty, it was not a real and probable danger, but was so improbable that it needed not to be taken into account. [Italics ours.]

In the *Hale* case the court said (pp. 68, 69):

> The further suggestion that the statute offers no immunity from prosecution in the state courts was also fully considered in *Brown* v. *Walker* and held to be no answer. The converse of this was also decided in *Jack* v. *Kansas*, 199 U. S. 372, namely, that the fact that an immunity granted to a witness under a state statute would not prevent a prosecution of such witness for a violation of a Federal statute, did not invalidate such statute under the Fourteenth Amendment. It was held both by this court and by the Supreme Court of Kansas that the possibility that information given by the witness might be used under the Federal act did not operate as a reason for permitting the witness to refuse to answer, and that a danger so unsubstantial and remote did not impair the legal immunity. Indeed, if the argument were a sound one it might be carried still further and held to apply not only to state prosecutions within the same jurisdiction, but to prosecutions under the criminal laws of other States to which the witness might have subjected himself. The question has been fully considered in England, and the conclusion reached by the courts of that country that the only danger to be considered is one arising within the same jurisdiction and under the same sovereignty. *Queen* v. *Boyes*, 1 B. & S. 311; *King of the Two Sicilies* v. *Willcox*, 7 State

Trials (N. S.), 1049, 1068; *State* v. *March*, 1 Jones (N. Car.), 526; *State* v. *Thomas*, 98 N. Car. 599.

In the *Nelson* case the court concludes as follows (p. 116):

> * * * It is insisted that the immunity given by the act of February 25, 1903, is not as broad as the penalties and forfeitures to which the plaintiffs in error or the corporations of which they are officers will be subjected. If the immunity, it is urged, protects from the penalties of the Anti-Trust Act of 1890, *it does not protect, nor has Congress the power to protect, from the penalties of the Minnesota laws*, which make criminal a combination and conspiracy in restraint of trade and subject to forfeiture the charters of corporations who become parties to such combination and conspiracy. Sections 6955, 6956, 5962, Statutes of Minnesota, 1894.
>
> The extent of the immunity and its application to corporations was considered in *Hale* v. *Henkel* and *McAlister* v. *Henkel*, and decided adversely to the contention of plaintiffs in error. [Italics ours.]

Since Congress can not constitutionally protect against State prosecutions, the decision of the court below means that no immunity statute can be passed at all, a view which can not be tolerated at the present day. Moreover, the decisions cited above are controlling.

CONCLUSION.

The judgment of the court below should be reversed.

WILLIAM WALLACE, JR.,
Assistant Attorney General.

MARCH, 1916.

APPENDIX.

Statutes exemplifying the exercise by Congress of its power to compel the furnishing by individuals, companies, and corporations of information concerning subjects falling within Federal jurisdiction. (Statutes requiring report from those only who are directly concerned in the business, or from their employees or officers, are not quoted at length.)

INTERNAL REVENUE.

Section 3307, Revised Statutes. Distillers' returns of materials used and production to collector.

Section 3308, Revised Statutes. Distillers' returns of the number of barrels distilled.

Section 3173, Revised Statutes (as amended by sec. 34, act of Aug. 28, 1894, 28 Stat. 509). Annual returns of persons liable to any duty or special or other tax.

Section 3337, Revised Statutes. As to brewers.

Section 3358, Revised Statutes. As to manufacturers of tobacco or snuff.

Section 3360, Revised Statutes. Section 35 of the act of August 5, 1909 (36 Stat. 11, 111), (retail dealers in leaf tobacco, "to furnish a true and correct statement * * * of all his sales of leaf tobacco," etc.).

Section 3390, Revised Statutes. As to manufacturers of cigars.

Section 3414, Revised Statutes. As to banks and bankers.

Section 3303, Revised Statutes. "Every person who makes or distills spirits, or owns any still, boiler, or other vessel used for the purpose of distilling spirits, or *who has such still, boiler, or other vessel so used under his superintendence, either as agent or owner*, or *who uses any such still, boiler, or other vessel*" to keep in a book "a true and exact entry of the kind of materials, and the quantity in pounds, bushels, or gallons purchased by him for the production of spirits, from whom and when purchased, and by what conveyance delivered at said distillery, the amount paid therefor, the kind and quantity of fuel purchased for use in the distillery, and from whom purchased, the amount paid for ice or water for use in the distillery, the repairs placed on said distillery or distilling apparatus, the cost thereof, and by whom and when made, and of the name and residence of each person employed in or about the distillery, and in what capacity employed," etc. (Section 3305 provides a penalty.)

Section 4353 requires the *master* of every vessel under 20 tons of burden licensed for carrying on the coasting trade and destined for any district of the United States to a district other than a district in the same or an adjoining State, on the seacoast or on a navigable river, to *deliver to the collector*, etc., previous to her departure *duplicate manifests of the whole cargo on board* such vessel; or, if there is no cargo on board, he *shall so certify;* and if there *are any distilled spirits* or *merchandise of foreign growth or manufacture on board*, other than what may by the collector be deemed sufficient for sea stores, he *shall specify* in such manifests the *marks and numbers* of every cask, bag, box, chest, or package containing the same, with the name and *place of residence of every shipper* and consignee

of such distilled spirits or merchandise of foreign growth or manufacture and the *quantity shipped by* and *to each*. (Section 4354 provides a penalty.)

Section 4349 is similar in its requirements to section 4353, but applies only to "vessels trading between neighboring districts." (Section 4350 provides a penalty.)

Section 4351 requires the masters of certain vessels upon arriving in port to deliver to the collector, etc., a manifest of cargo. (Section 4352 provides a penalty.)

Sections 4367 and 4368 require the masters of foreign vessels to deliver to the collector, etc., manifests of cargo. (Section 4369 provides a penalty.)

Section 8 of the act of April 12, 1902 (32 Stat., 97, 98), *required every executor, administrator,* or *trustee* having in charge *certain described estates*, to "*render* to the said collector or deputy collector a *schedule, list*, or *statement*, in duplicate, of the amount of such legacy or distributive share, together with the amount of duty which has accrued, or shall accrue, * * * which schedule, list, or statement shall contain the names of each and every person entitled to any beneficial interest therein, together with the clear value of such interest."

Failure to comply with these requirements subjects the executor, administrator, or trustee to a penalty. (Treated as valid legislation in *Hertz* v. *Woodman*, 218 U. S. 205, 214–6, 220.)

As to returns required by corporation tax act of 1909 (36 Stat. 112, 114), see *Flint* v. *Stone Tracy Co.*, 220 U. S. 108, 174–176. Such returns are required whether there be a tax liability or not. (*United States* v. *Military Const. Co.*, 204 Fed. 153; *United States* v. *Acorn Roofing Co.*, 204 Fed. 157.)

Paragraphs D and E of Section II of the tariff act of 1913 (38 Stat. 168–169) as to withholding income at source:

> *Guardians, trustees, executors, administrators, agents, receivers, conservators,* and *all persons,* corporations, or associations *acting in any fiduciary capacity,* shall *make and render a return* of the net income of the person for whom they act, subject to this tax, *coming into their custody or control and management,* and be subject to all the provisions of this section which apply to individuals.
>
> * * * All persons, firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, *trustees acting* in *any trust capacity, executors, administrators, agents, receivers, conservators,* employers, and all officers and employees of the United States having the *control, receipt, custody, disposal,* or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding $3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, *who are required* to make *and render a return in behalf of another, as provided herein,* to the collector of his, her, or its district, are *hereby authorized and required to deduct* and *withhold* from *such annual gains, profits,* and *income such sum* as

will be sufficient to pay the normal tax imposed thereon by this section *and shall pay to the officer of the United States Government* authorized to receive the same; and they are each hereby made personally liable for such tax. * * *

Section 5 of the act of June 6, 1896 (29 Stat. 253, 254), requires every manufacturer of filled cheese to file with the Collector of Internal Revenue "such notices, inventories, and bonds," and to "keep such books and render such returns of materials and products," to "put up such signs and affix such number to his factory, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may by regulation require." A violation is punishable.

Section 6 of the act of May 9, 1902 (32 Stat. 193, 197), requires wholesale dealers in oleomargarine, process, renovated, or adulterated butter to "keep such books and render such returns in relation thereto as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, by regulation, require." A violation is punishable.

IMMIGRATION.

Section 8 of the act of July 5, 1884 (23 Stat. 115, 117), requires the master of any vessel arriving in the United States from any foreign port or place to furnish the collector with a "*list of all Chinese passengers taken on board* his vessel at any foreign port or place and all such passengers on board the vessel at that time." For failure to furnish this list is punishable.

Act of February 20, 1907 (34 Stat. 898).

SEC. 12. That upon the arrival of any alien by water at any port within the United States it shall be the duty of *the master* or *commanding officer* of the steamer, sailing or other vessel having said alien on board to deliver to the immigration officers at the port of arrival lists or manifests made at the time and place of embarkation of such alien on board such steamer or vessel, which shall, in answer to questions at the top of said list, state as to each alien the full name, age, and sex; whether married or single; the calling or occupation; whether able to read or write; the nationality; the race; the last residence; the name and address of the nearest relative in the country from which the alien came; the seaport for landing in the United States; the final destination, if any, beyond the port of landing; whether having a ticket through to such final destination; whether the alien has paid his own passage or whether it has been paid by any other person or by any corporation, society, municipality, or government, and if so, by whom; whether in possession of fifty dollars, and if less, how much; whether going to join a relative or friend, and if so, what relative or friend, and his or her name and complete address; whether ever before in the United States, and if so, when and where; whether ever in prison or almshouse or an institution or hospital for the care and treatment of the insane or supported by charity; whether a polygamist; whether an anarchist; whether coming by

reason of any offer, solicitation, promise, or agreement, express or implied, to perform labor in the United States, and what is the alien's condition of health, mental and physical, and whether deformed or crippled, and if so, for how long and from what cause; that it shall further be the duty of the master or commanding officer of every vessel taking alien passengers out of the United States, from any port thereof, to file before departure therefrom with the collector of customs of such port a complete list of all such alien passengers taken on board. * * *

Sections 13 and 14 of the same act require further information concerning the alien.

Section 15 of the same act provides a penalty of $10 in the case of each alien concerning whom the required information is not furnished. The validity of this legislation was assumed in *United States* v. *Williams*, 193 Fed. 229, 231; *United States* v. *Fielding*, 175 Fed. 290, 291; *United States* v. *Coombs* (2d C. C. A.), 200 Fed. 400, 401, 402.

BANKRUPTCY.

Act of July 1, 1898 (30 Stat. 551), as amended by act of Feb. 5, 1903 (32 Stat. 798).

SEC. 21. Evidence. A court of bankruptcy may, upon application of any officer, bankrupt, or creditor, by *order require any designated person*, including the bankrupt and his wife, to *appear in court* or *before a referee* or the judge of any State court, to be *examined concerning the acts, conduct*, or *property* of a

bankrupt whose estate is in process of administration under this act: Provided, That the wife may be examined only touching business transacted by her or to which she is a party, and to determine the fact whether she has transacted or been a party to any business of the bankrupt.

In re *Iron Clad Mfg. Co.*, 201 Fed. 66.
In re *Seligman*, 192 Fed. 750.
In re *Bryant*, 188 Fed. 530.
In re *Robinson*, 179 Fed. 724.

INTERSTATE COMMERCE.

Section 20. Interstate commerce act of February 4, 1887, as amended (1911 Supp. Comp. Stat. 1304–1305). Annual, monthly, and special reports from common carriers and owners of railroads, and answers by carriers to questions of the commission; contents of reports.

Int. Com. Comm. v. *Goodrich Transit Co.*, 224 U. S. 194.

Balt. & Ohio R. R. v. *Int. Com. Comm.*, 221 U. S. 612.

Section 1 of the act of May 6, 1910 (36 Stat. 350, 351), requires the "general manager, superintendent, or other proper officer of every common carrier engaged in interstate or foreign commerce by railroad" to make a monthly report to the Interstate Commerce Commission "of all collisions, derailments, or other accidents resulting in injury to persons, equipment or roadbed arising from the operation of such railroad." A violation is punishable.

Section 8 of the act of February 17, 1911 (36 Stat. 913, 916), requires "that in the case of accidents resulting from failure for any cause of a locomotive boiler or its appurtenances, resulting in serious injury or death to one or more persons, a statement forthwith must be made in writing of the fact of such accident, by the carrier owning or operating said locomotive, to the chief inspector." A violation is punishable.

CENSUS.

Section 23 of the act of July 2, 1909 (36 Stat. 1, 8), makes it the duty of *all persons* over *twenty-one years* of age when requested by the Director of the Census, or by any supervisor, enumerator, or special agent, or other employee of the Census Office, acting under the instructions of the said Director, "to *answer correctly*, to the *best of their knowledge, all questions on the census schedules* applying to themselves and to the family to which they belong or are related, and to the *farm or farms* of *which they or their* families are the occupants." Refusal or neglect to answer subjects party to a fine.

Section 24 of the same act makes it the duty of "every owner, president, treasurer, secretary, director, or other officer or agent of any manufacturing establishment, mine, quarry, or other establishment of productive industry, whether conducted as a corporation, firm, limited liability company, or by private individuals, when requested by the Director of the Census * * * to answer completely and correctly to the best of his knowledge all questions on any census schedule applying to such establishment." Refusal or neglect to answer the questions is punishable.

Section 8 of the act of April 30, 1912 (37 Stat. 106, 107), requires that all persons subject to the provisions of this act "within ten days after the first day of October and first day of April in each year, make written report to the Director of the Census the number of pounds of each of the several types of leaf tobacco owned by him as of the said dates, respectively." Failure to make the report subjects the party to a fine.

Section 4 of the act of July 22, 1912 (37 Stat. 198), declares "that it shall be the duty of every owner, president, treasurer, secretary, director, or other officer or agent of any cotton ginnery, manufacturing establishment, warehouse, or other place where cotton is ginned, manufactured, or stored, whether conducted as a corporation, firm, limited partnership, or by individuals, when requested by the Director of the Census * * * to furnish completely and correctly, to the best of his knowledge, all of the information concerning the quantity of cotton ginned, consumed, or on hand, and the number of cotton consuming spindles." Refusal or neglect to furnish the information subjects the party to a fine or imprisonment or both.

NATIONAL BANKS.

Section 5211 R. S.

"Every association shall make to the Comptroller of the Currency not less than five reports during each year, verified by the oath or affirmation of the president or cashier of such association, and attested by the signature of at least three of the directors. * * * The Comptroller shall also have power to call for special reports from any particular association whenever in his judgment the same are necessary

in order to a full and complete knowledge of its condition."

Section 5212 R. S.

"In addition to the reports required by the preceding section, each association shall report to the Comptroller of the Currency, within ten days after declaring any dividend, the amount of such dividend, and the amount of net earnings in excess of such dividend. Such reports shall be attested by the oath of the president or cashier of the association."

Section 5213 R. S.

"Every association which fails to make and transmit any report required under either of the two preceding sections shall be subject to a penalty of one hundred dollars for each day after the periods, respectively, therein mentioned, that it delays to make and transmit its reports * * * ."

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